Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Comment Sought on Streamlining	)	
Deployment of Small Cell Infrastructure by	)	WT Docket No. 16-421
Improving Wireless Facilities Siting Policies;	)	
	)	
Mobilitie, LLC Petition for Declaratory	)	ET Docket No. 13-84
Ruling	)	
	)	
Notice of Inquiry, Reassessment of	)	
Federal Communications Commission	)	ET Docket No. 03-137
Radiofrequency Exposure Limits and Policies	)	

SUPPLEMENTAL REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

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SUMMARY

Montgomery County, Maryland (the "County"), by its counsel, filed comments and reply comments in WT Docket 16-421 as part of the Smart Communities Siting Coalition. The County files these Supplemental Reply Comments to provide follow-up information about the status of Mobilitie's applications to deploy wireless facilities in Montgomery County and to provide additional information about cost-based permit fees. The County further notes that it was the only party to file comments that provided systemic data regarding the effects of local regulations on wireless facility siting as requested by the Commission.

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SUPPLEMENTAL REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Montgomery County, Maryland (the "County"), by its counsel, filed comments and reply comments in WT Docket No. 16-421[1] as part of the Smart Communities Siting Coalition.[2] The County files these Supplemental Reply Comments to provide follow-up information about the status of Mobilitie's applications to deploy wireless facilities in Montgomery County and to provide additional information about cost-based permit fees. In addition, while the County does not believe that the Commission has legal authority to expand "deemed granted" – *i.e.*, preemptive zoning by another name, the County nonetheless requests that the Commission

[1] *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, WT Docket No. 16-421 (Dec. 22, 2016)("*Public Notice*").

[2] Comments of Smart Communities Siting Coalition (filed Mar. 8, 2017)("Smart Communities Comments") and Reply Comments of Smart Communities Siting Coalition (filed Apr. 7, 2017)("Smart Communities Reply Comments").

reevaluate all time limits for local government review of wireless siting applications should it opt to do so.

I. MONTGOMERY COUNTY WAS THE ONLY PARTY TO PROVIDE SYSTEMIC DATA. SUCH DATA SHOULD BE ACCORDED GREATER WEIGHT THAN ANECDOTAL ASSERTIONS

Smart Communities' Reply Comments note, there "were approximately twenty-two industry comments filed in this docket and no less than seventeen (17) of these industry filings make no reference to any specific community in alleging conduct that might lead to delays in wireless infrastructure deployment."[3] To this, Montgomery County adds that NONE of the industry commenters provided systemic data as requested by the *Public Notice*.[4] None of the industry commenters – AT&T, Sprint, T-Mobile, Verizon, Lightower, Extenet, or their various coalitions and trade associations – provided any systemic data describing:

- The number of facilities they have deployed over a specific number of years;
- The percentage of their applications filed for antenna replacements (minor modification in the real sense), collocations, or new sites
- The average time required either overall or an annual basis to obtain regulatory approval
- The difference in time required by local governments to take action to review antenna replacements (minor modification in the real sense), collocations, or new sites
- What the average time required to receive approval or denial by a local government is as a percentage of the total time required to acquire spectrum, design networks, obtain equipment, and install equipment

[3] Smart Communities Reply Comments at 4 (footnote citing commenters omitted).

[4] Public Notice at 9.

In contrast, Montgomery County provided a summary of twenty-one (21) years of data and included an Internet address to a publicly available database so that any party or the Commission could independently verify the data provided in the County's Supplemental Comments.[5]

In summary, the County provided the following systemic data:[6]

- The County received 2,900 applications over 21 years
- The County recommended 2,382 applications and did not recommend 20, with the remainder pending or withdrawn (a denial rate of less than one percent (1%))
- Currently, there are 1,121 wireless facilities deployed at 534 unique locations
- Seventy (70) percent of wireless facilities sites have 2 or more carriers
- AT&T, Sprint, T-Mobile and Verizon have seventy-nine (79) percent of facilities, 193, 246, 245, and 204 respectively, and each has had more applications approved in the past three years than in previous years
- The County processed 60,543 permits in FY2016 and only 265 were for wireless siting facilities

The *Public Notice* promised that the Commission would "accord greater weight to systematic data than merely anecdotal evidence."[7] Following that directive, the Commission must accord greater weight to Montgomery County's systemic data and must find that local government regulations like Montgomery County's do not have the effect of prohibiting the provision of wireless service.

Moreover, the County provided systemic data to demonstrate that new providers such as Mobilitie are not seeking to expand service to the one-third of the County that is rural – rather, providers seek to deploy facilities in the most populated areas of the County.[8] The County

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[5] Montgomery County Supplemental Comments at 5-9. The Montgomery County database is available at https://www.montgomerycountymd.gov/towers.

[6] *Id.*

[7] Public Notice at 9.

[8] Montgomery County Supplemental Comments at 9.

remains committed to bringing services to all its residents and is currently working to streamline approval for "microcell" lower height facilities – that is, poles under thirty (30) feet tall. The Commission rules are therefore not only unnecessary, they impede such efforts to streamline approval processes.[9]

Montgomery County not only provided the systematic data sought by the Commission, but also demonstrated the market reality. In a pure marketplace, "small cell" deployment will not conquer the national digital divide. It will exacerbate, not ameliorate, the problem of limited broadband options in rural America.[10]

II. REGULATORY FEES ARE ALREADY COST-BASED INDUSTRY SHOULD STOP CONFLATING REGULATORY FEES WITH MARKET-BASED RENTS

Multiple commenters conflate regulatory fees with market-based rents. Under Maryland common law, regulatory fees must be reasonable and related to the purpose of regulatory measure.[11] The County presumes that this principle is common to all states. Thus, the County

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[9] For example, the Commission's interpretation of Section 6409 is likely more of an obstacle to facilitating efficient deployment of "micro cell," lower height facilities. The Commission's inexplicable decision to interpret "minor modification" as an increase of ten (10) percent or ten (10) feet – *whichever is greater* when a facility is in the right of way, or an increase of twenty (20) percent or twenty (20) feet – *whichever is greater* when a facility is not in the right of way, means that a zoning ordinance that would facilitate deployment of twenty-five (25) feet tall facilities in residential neighborhoods, could lead to thirty-five (35) or forty-five (45) foot tall facilities – a decidedly non-minor increase of increase of forty (40) to eighty (80) percent that is well over the Commission's lesser ten (10) percent modification. Thus, the Commission's overly broad interpretation is now an obstacle to local efforts to facilitate deployment of micro cell poles shorter than 30-feet in residential and commercial areas. More one-size-fits all federal preemption with more unintended consequences is not helpful and is not needed.

[10] Montgomery County Supplemental Comments at 21-26. For example, Mobilitie's requested small cell deployments are not in the rural one-third of the County. *Id*. at 24-26.

[11] *Theatrical Corporation v. Brennan*, 180 Md. 377, 380-82, 24 A.2d 911 (1942).

has no issue limiting regulatory fees to cost – the County already limits regulatory fees to cost. Here is a more detailed look at Montgomery County fees.

A. Regulatory Fees Are Limited to Cost in Montgomery County

In Montgomery County, the County requires three types of regulatory fees for wireless facilities: (1) Office of Zoning and Administrative Hearing (OZAH) fees; (2) Permitting fees; and (3) TFCG application fees.

1. Zoning Hearing Fees Are Cost-Based

The County's zoning code is designed to balance the need for wireless telecommunications facilities siting with a reasonable opportunity for public input on new facilities siting, and to be in compliance with Commission-mandated time limits to review and make final decisions on facilities siting applications. Applications that meet specific zoning code height, set back, and equipment size requirements are permitted as Limited Use.[12] A Limited Use application meets specific conditions that were approved in law and a public hearing was held to allow public input on the Limited Use conditions. Therefore, Limited Use is presumed to conform to acceptable community use standards, and no additional zoning public hearing is required.

Applications that do not meet these Limited Use conditions may be allowed as a Conditional Use.[13] The Office of Zoning and Administrative Hearings (OZAH) is required to

[12] Montgomery County Code Section 59-3.5.2.C.2.a and 59-3.5.14.C.2, 2014, as amended.

[13] *Id*. at Section 59-3.5.2.C.2.b.

have a Hearing Examiner conduct a public hearing for Conditional Use applications[14] and surrounding property owners are notified of the hearing.[15] The Hearing Examiner also considers the TFCG recommendation as part of the review of a Conditional Use application.[16] Thus, the public hearing held by the Office of Zoning and Administrative Hearings servesas the appropriate venue for public participation on Conditional Use applications.

In the past twenty-one years, only three percent (3%) of all wireless facilities required an OZAH review, and since the zoning code was rewritten in 2014, only one Conditional Use application for a telecommunications facility was filed. The fee for an OZAH Conditional Use applications is $16,900 and is cost-based. Based on limited data, OZAH estimates that the cost to review a Conditional Use application for a telecommunications facility maybe $23,375. Annually, OZAH hosts approximately forty-six (46) hearing days. OZAH estimates that for new sites in the same neighborhood, up to five could be batched together. But the application fee is not likely to be reduced because, (a) the estimated cost per application to hold a public hearing is higher than the current fee, and, (b) significantly more hearing examiners will need to be retained to process applications within the 150-day shot clock. The Mobilitie applications alone would require a twenty-six percent (26%) to one hundred thirty percent (130%) increase in hearing examiner resources.

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[14] *Id*. at Section 59-7.3.1.B.5.

[15] *Id*. at Section 59-7.5.2.E.

[16] *Id*. at Section 59-3.5.2.C.2.b.i.

2. Permitting Fees are Cost-Based

The Permitting fee applies to any entity performing construction and is cost-based. The Department of Permitting Services is an Enterprise Fund. Costs for all of the Permitting Department's functions must be recovered through fees charged to applicants. Funds received by the Permitting Department are not used for General Fund purposes. Recently, the Permitting Department commissioned an expert review of its fees, and as a result, *lowered it fees*.[17] The application fee for a building permit application for a telecommunications facility is a minimum of $425 for a facility in the public right of way or $670 for an attachment to building, or a percentage of the value of building project (which typically applies during construction of a new macrocell tower).

3. TFCG Application Fees Are Cost-Based

The TFCG applications fee is the only fee imposed by Montgomery County that applies only to wireless facilities.[18] The TFCG application fee is charged to recover the cost for a wireless engineering review. The TFCG staff conducts an engineering review of a telecommunications facility application, a site visit, reviews the impact on other land uses, determines whether a proposed telecommunications facility will interfere with existing telecommunications uses (including public safety communications) and where new sites are

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[17] The expert report is available at https://permittingservices.montgomerycountymd.gov/DPS/pdf/DPSFeeFinalReport2015.pdf.

[18] *See* Code of Montgomery County Regulations (COMCOR), Section 02.58E.02.02. All wireless transmission facilities – including government agency and public safety communications towers – must apply for an engineering review and recommendation by the TFCG. Application materials, regulations, a database of applications, meeting agendas and minutes are posted on a single website. www.montgomerycountymd.gov/towers. The TFCG holds a regular, monthly meeting, open to the public.

proposed, and discusses with the applicant whether available colocation options were considered. Fees are set based on categories, reflecting the level of effort required to review applications:[19]

- $500 for minor modifications (typically antenna replacements or upgrade);
- $1,000 for collocations (such as on top of existing poles or buildings);
- $2,000 for new structures that meet current zoning requirements;
- $2,500 for new structure that would require additional zoning approval

These fees are periodically reviewed. The fees for new structures are significantly less than the actual cost, roughly only fifteen (15%) to twenty-five (25%) of the actual cost. The County opted to keep these fees low to facilitate the deployment of telecommunications facilities in the mid-1990s and 2000s. Until very recently, over the County's twenty-one (21) year history of reviewing TFCG applications, only fifteen percent (15%) of applications were for new applications, so the County's subsidizing of these applications was manageable. In addition, there was no shot clock until 2009, and still very few applications for new sites after 2009. In light of the increase in volume, increase in multiple applications – sometimes number in the 100's – filed in a single day subject to the same shot clock, and potential "deemed granted" preemptive zoning impact, the County is reviewing this subsidy.

B. Rents Charged for Use of Public Property, Structures and Rights of Way Should Be Market-Based

Regulatory fees recover the cost of processing applications. Franchise fees for use of public property recover the fair market value of a public good. The legal arguments for this distinction are set forth in the Smart Communities Comments and Reply Comments and not repeated here. However, the County notes that this distinction is similar to the Commission's

[19] COMCOR, Section 02.58E.02.02.g.

licensing fees and spectrum auction bids[20] – the licensing fees are cost-based, and the spectrum auction will recover billions at fair market value. As the County has noted herein and in its Supplemental Comments, providers are not seeking access to all rights of way. Rather, they want access to the rights of way near the commercial and residential centers that have the densest populations, where the County and others have made investments that make these properties attractive and cost-effective for telecommunications providers.

III. THE COUNTY'S MOBILITY EXPERIENCE IS AN ONGOING 10-MONTH ODYSSEY THAT IS BECOMING AN EXERCISE IN BURDEN-SHIFTING

The County's ten-month odyssey with Mobilitie was extensively documented in detail in our Supplemental Comment.[21] In summary:

1. Mobility first approached the County in May 2016.
2. Ignoring written instruction and verbal assistance,[22] Mobilitie filed 22 incomplete applications on July 29, 2016 and another 119 incomplete applications on September 30, 2016.

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[20] On this issue, the County and Commissions appear to have a common position. The Commission has a long history of employing auctions as a means to achieve the fairest return for government property is explained by the Commission at http://wireless.fcc.gov/auctions/default.htm?job=about_auctions.

> "In 1993 Congress passed the Omnibus Budget Reconciliation Act, which gave the Commission authority to use competitive bidding to choose from among two or more mutually exclusive applications for an initial license. Prior to this historic legislation, the Commission mainly relied upon comparative hearings and lotteries to select a single licensee from a pool of mutually exclusive applicants for a license. The Commission has found that spectrum auctions more effectively assign licenses than either comparative hearings or lotteries. The auction approach is intended to award the licenses to those who will use them most effectively. Additionally, by using auctions, the Commission has reduced the average time from initial application to license grant to less than one year, and the public is now receiving the direct financial benefit from the award of licenses.

[21] Montgomery County Supplemental Comments at 12-20. The County also noted that the County has issued seventy-seven (77) recommendations for sitings for other carriers in the same time period.

3. Mobilitie did not comply with written Requests for Information provided on:

a. August 17, 2016

b. October 9, 2016

c. November 2, 2016

4. Mobility provided complete information for one application in February 2017.

To this, County now adds:

5. The County recommended the sole complete application on April 5, 2016, and Mobilitie has submitting missing information for 20 other collocation applications.

6. On March 23, 2017, the Chair of the TFCG met with the Permitting Manager for Mobilitie. The Permitting Manager had just started with Mobilitie in the past month. He stated that Mobilitie would be unable to file the missing information within the next five weeks.

7. On March 28, 2017, Mobilitie filed a written request to file applications in five batches. No mention was made that these applications had been previously submitted or that Mobilitie has agreed in early February 2017 to file all missing information by April 30, 2017 or resubmit as new applications with new application fees. Rather, Mobilitie stated, "we are currently redesigning our network to accommodate the comments and concerns from the community, which will require that we submit our applications in phases over the next five months." Mobilitie then proposed to file two hundred four (204) applications between March 2017 and August 31, 2017.

8. The County contacted Mobilitie to ask why the total applications now proposed was more than the one hundred forty-one (141) incomplete applications. Mobilitie's response was that they wanted to substitute applications, add new applications, and not be charged any additional fees to replaced applications already submitted with entirely different applications. Instead of twenty-four collocations and one-hundred seventeen (117) new site applications, Mobilitie's new network would have one hundred forty-four (144) collocations and sixty (60) new sites.

Mobilitie is now requesting that the County provide them an additional three months to provide complete information – that is, they are requesting ONE YEAR to file complete applications. Mobilitie could have taken an additional year before filing its applications to provide itself sufficient time to perform due diligence on its network design plans. But what Mobilitie does not have a right to do is ask the County to subsidize the cost of its efforts to

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[22] All application materials are available at http://www.montgomerycountymd.gov/towers.

redesign its network by allowing it to replace one hundred twenty (120) incomplete applications for new sites – that is to replace eighty-five percent of their applications that have already been reviewed – with applications for collocations without corresponding application fees.

While the County reviews this request, there are lessons to be learned:

A. Small Cell Should Not Be Confused With Microcells

All of Mobilitie's applications are for facilities taller that thirty-nine (39) feet, and sixty-seven percent of their facilities are taller than seventy-two (72) feet.[23] Mobilitie's applications are not for "microcell," *i.e.*, short poles on par with 14-foot streetlights. Small cells simply refer to the antenna size – instead of the antenna and equipment being the size of dumpster, it is closer to the size of a 120-quart fishing coolers. From an engineering review standpoint, there is very little difference and certainly no reason to shorten the time to review by sixty percent (60%). A 120-foot or 75-foot pole is not invisible, and it very much matters whether the pole if struck by a car, or topple by hurricane-force winds, will fall on nearby structures. Moreover, as a new commercial facility, there is no reason to create so short a time frame to review, that the community is denied a public hearing to participate in the placement of 8-story to 12-story telecommunication facilities in the community.

[23] The majority Mobilitie's installations would not meet the WIA definition of a small cell, nor the definition of small cell adopted by every state that has defined the term to date, which is generally shorter than fifty (50) feet. Of Mobilitie's initial one hundred twenty-four (124) applications for new poles: six percent (6 %) were for 120-foot poles; sixty-two percent (62%) were for 72-foot to 76-foot poles; and six percent (6%) were for 46-foot to 68-foot poles.

B. The County Lacks Resources to Accommodate Shorter Shot Clocks for Batched Applications

County does not have unlimited resources available to process over one hundred applications when filed in a single day within three to five months. The County must use outside contractors because of the unpredictable and inconsistent nature of the submissions. And having a massive number of applications submitted in a single day drives up costs because more experienced, and thus more expensive, engineers must be brought in to handle the work load within the arbitrary time frames established by the Commission. [24]

The Commission does not have legal authority to extend the "deemed granted" approach. However, if the Commission persist in this approach, it should review all time limits, and in particular, extend the time needed review siting new facilities. A preemptive zoning rule will require the County to significant increase regulatory fees to ensure that all reviews – including batched submissions numbering in the hundreds – can be reviewed within the arbitrarily short time frames established in 2009. At that time, the Commission receive no evidence of the number of new site applications that is on par with the requests for densification that is now occurring.

C. Mobilitie's Actions Result in a Burden and Cost Shifting to the County and Other Applicants

Mobilitie's actions demonstrate that the failure of carriers to submit complete applications may create significant delays, and drive up the overall costs to process applications. Over a period of eight months, the County has spent over $75,000 for over 500 hours of outside

[24] Any expansion by the Commission of deemed granted relief will also drive up the costs as local government must hire additional staff and experts to ensure applications are not approved by Commission fiat.

engineering and administrative time to review Mobilitie's 141 applications, met seven times with Mobilitie in person or by conference call, and exchanged countless e-mails and phone calls. In the same period, the TFCG recommended 95 other applications. Mobilitie now suggests that the County subsidize its decision to redesign its network.

D. Mobilitie Seeks One-Side Rule Changes That Create Obligations for Local Governments, But Not for Mobilitie

In its Comments, Mobilitie stated, "A northeastern jurisdiction is still reviewing applications that have been submitted without response for eight months."[25] The County is uncertain if Mobilitie is referring to Montgomery County – because in part Mobilitie violated the Commission's rules that such jurisdictions be identified. But it is impossible to say whether that unnamed northeastern jurisdiction has been waiting eight months – as Montgomery County has been – for Mobilitie to submit missing information.

Mobilitie complains that for "well over half" its permit applications, "the process has taken over six months, and many have been awaiting approval for over a year. This glacial pace is the result of both time working with jurisdictions as they change or create application requirements and process, and of delay after applications are complete."[26] The County cannot speak to what happens after Mobilitie has submitted completed applications, because seven months after submitting Permit applications that required TFCG recommendations as a permit condition, Mobilitie still has incomplete applications pending for all one hundred twenty-four

[25] Mobilitie Comments at 16.

[26] *Id.* at 15-16.

(124) of its new site applications. Mobilitie glaringly omits that Mobilitie's inability to file complete applications also contributes to this "glacial pace."

1. Mobilitie Seeks a Shot Clock For Local Governments, But Not For Mobilitie

Despite its inability to meet a shot clock, Mobilitie "urges the Commission to set a new shot clock of no more than 60 days for all small cell installations, whether they are placed on new poles or attached to existing structures."[27] Mobilitie further states: "Delay in acting on a small cell siting permit is presumptively unreasonable if it extends beyond 60 days."[28] The County notes, more than one-twenty (120) days after filing incomplete applications, the County asked Mobilitie how much longer they would need to file the missing information, and Mobilitie requested eighty (80) additional days which the County granted. Midway through this additional extension, Mobility requested another one hundred twenty-three (123) days to file complete applications, and that it should be permitted to replace one hundred twenty (120) applications, *i.e.*, *replace eighty-five percent (85%) of its applications*, with entirely new and different applications *at no additional fee*. Presumably, Mobilitie would argue that after taking three hundred sixty-seven (367) days to submit applications, the County drop everything and process Mobilitie's application in sixty (60) days. What is "presumptive unreasonable," rests in the eye of the beholder.

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[27] *Id.* at 19.

[28] *Id.* at 4.

2. Mobilitie Confuses Incentives with Prohibitions

Mobilitie states that localities should not restrict "deployments only to attachments to existing poles. Such as prohibition interferes with a provider's design of its network… ."[29] Montgomery County does not limit deployment only to attachments. But the County notes that less than five months after submitting one hundred twenty-four (124) incomplete applications, Mobilitie has been able to redesign its network to eliminate fifty-two percent (52%) of its new pole requests – at its own initiative. Thus, local ordinances that incentivize collocation should not be viewed with a one-size-fits-all lens as all bad or all good. Mobilitie's own actions demonstrate that there is a lot of leeway in network design, and network design to address community concerns is both entirely possible, and potentially more cost-effective for the carrier.

3. Mobilitie Misunderstands the Public Can Also Be Proprietary

Mobilitie states that "municipal rights of way and structures within in are public property that serves public functions; they are not in any way 'private' or 'proprietary' the way privately-owned building is."[30] Mobilitie is wrong.

While the County makes all public rights of way available on a non-discriminatory basis, is does require a franchise to occupy or use that asset, and permits for all construction is required regardless of whether it is in the public right of way. As noted above, permit fees are cost-based regulatory fees. Fees for use of the public rights of way must be reasonable, and are not limited

[29] *Id.* at 18.

[30] *Id.* at 20.

to cost, but do in fact recover the significant cost of acquiring and maintaining rights of way.[31] Public infrastructure costs money to construct and maintain in the same way that privately-owned buildings do. County taxpayers provide nearly $150 million annually to construction and maintain these public right of way.[32] And as the County demonstrated in it Comments,[33] Mobilitie does not just want access to any public rights of way in the County, it only wants access to areas with the densest population concentration, where the County has aggregated demand for mobile services by investing in transit, libraries, community facilities and schools. It is a cycle of support. The County has created commercial areas to attract businesses, and businesses have invested to create attractive amenities for residents, and demand exists for mobile communications. Mobilitie has no special right to install infrastructure on public properties merely because the property is public. There are competing interest for the property[34], and it is the County's duty to ensure that such properties serve the public benefit.

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[31] A great many states have rules against gifting public property for less than market value. See also Comments of Texas Municipal League at p. 5-8 (filed Mar. 8, 2017) ("Texas municipalities control the underlying rights-of-way on which light poles and utility poles are located. They hold the public property in trust, as fiduciaries, to protect the public's interest.") AASHTO Comments at p. 2 (23 CFR 710 Subpart D provisions require that compensation for non-highway use of right-of-way be based on their fair market value).

[32] County operating and construction (CIP) budgets are available at http://www.montgomerycountymd.gov/omb/. Annually the County spends: Road CIP $45.5 million ($273 million six-year total); Bridges CIP $4.4 million ($26.5 million six-year total); Pedestrian facilities and Bikeways CIP $36.1 million ($216.7 million six-year total); Highway CIP $28.9 million ($173.7 million six-year total); Traffic CIP $14.2 million ($85.3 million six-year total); Roadway and related maintenance $17.8 million; Road resurfacing ($2.6 million); Bridge maintenance $0.18 million.

[33] Montgomery County Supplemental Comments Figure 3 at 26.

[34] County streetlights are also public property with the designed purpose of lighting the rights of way. In most cases, the streetlight cannot support new telecommunications antennas – even small cells – but rather must be replaced with a taller or stronger pole. When and if this happens is best addressed at the local level.

E. The Commission Should Act to Protect Localities and Other Providers from Bad Actors

Nothing in the Commission's *Public Notice* makes any effort to address bad actors like Mobilitie. Nor does anything in the *Public Notice* seek to ensure that when local governments dedicate scarce resources to facilitate broadband deployment, that carriers will act responsibly, or seek to provide service to underserved rural areas.

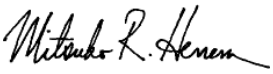
As documented by the County, in the instant matter, Mobilitie rejects a shot clock on its efforts to file complete applications, has taken over a year to file missing information, and now seeks to submit without an application fee an entirely new network design five months after a public meeting in which it was seemingly surprised that the public was opposed to installing 120-foot and 75-foot poles. Failure to govern such conduct, not only hurts local government and its residents, it hurts other providers that will be assessed high fees in future years as the average cost per application is driven up by Mobilitie.

IV. CONCLUSION

There is no need for a further declaratory ruling by the Commission. The County was the only party to submit systematic data in response to the Commission request for comments, and therefore the County's data should be accorded greater weight as evidence that local regulatory processes and ordinances do not have the effect of prohibiting the provision of service. Regulatory fees are already cost-based. Carriers are disproportionately seeking to deploy facilities in densely populated areas where local governments and other businesses have made investments that make these properties attract to telecommunications carriers; thus, carriers should pay market-based rents. Local governments work every day to develop public-private partnerships to promote broadband deployments in ways that do not sacrifice community

interests. Additional one-size-fits all federal preemption is not needed. Rather as the County noted in its Supplemental Comments, Commission action to address community concerns about the health effects of RF emissions should be taken as soon as possible.

Respectfully submitted,



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